UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CAMDEN DIVISION

RECEIVED
WILLIAM T. WALSH, CLERK

2008 AUG 22 A 9:55

UNITED STATES
DISTRICT COURT

MDL DOCKET No. 1850 (all cases)

Civil Action No. 07-2867 (NLH)

IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION	INTERESTED PARTY'S MOTION FOR DECLARATORY JUDGMENT OR RELIEF FROM STAY

To the Honorable Noel L. Hillman, Judge, Bankruptcy Court:

Now Comes Robert M. Josephs, a pro se Interested Party, (hereinafter "Josephs"), respectfully requests that this Honorable Court provide Josephs with a Declaratory Judgment that allows Josephs to proceed with his state small claims civil action against Nutro now pending in the Waltham District Court in Waltham, Massachusetts . In support of this Motion, Josephs states as follows:

1) On May 5, 2007, Josephs' two year old cat, Badger, passed away, after an illness after consuming Nutro Products, Inc. (hereinafter "Nutro") cat food for several months;

2) Josephs was directed to the Nutro's insurance carrier, the Hartford.

3) On September 26, 2007, the Hartford sent Josephs a letter rejecting Josephs' insurance claim and notifying Josephs that he may file a civil action, among other remedies;

4) On March 18, 2008, Josephs wrote to the Hartford requesting the Hartford to reconsider its decision, since Nutro did commit an unfair and deceptive business practice pursuant to Massachusetts General Laws Chapter 93A section 9, by selling tainted cat food;

5) Josephs did not receive a response from the Hartford;

6) On May 13, 2008, Josephs sent a certified demand letter pursuant to Massachusetts General Laws Chapter 93 section 9 to Nutro claiming Nutro committed an unfair and deceptive business practice;

7) On May 15, 2008, Nutro received the demand letter;

8) Nutro did not respond to the demand letter;

9) On June 26, 2008, Josephs sent a follow-up certified letter to Nutro demanding a response and absent a response Josephs would file a Civil Action against Nutro;

10) Nutro did not respond to the follow-up letter;

11) On July 29, 2008, Josephs filed the state small claims action in Waltham District Court, Waltham Massachusetts, entitled Josephs v. Nutro Products, Inc. and Rond Ong, President, Civil Action

Dockets.Justia.com

12) The Waltham District Court marked up the small claims Trial for September 15, 2008, at 9:00 A.M. Attached as Exhibit 'A' is the Statement of Small Claims and Notice of Trial in Josephs v. Nutro;

13) On August 13, 2008, Gary L. Justice, Esq., emailed me stating that his law firm, Gibson, Dunn & Crutcher, LLP, represents Nutro Products, Inc.;

14) Mr. Justice's email stated that "The preliminary approval order entered in the class action case provides for a stay of actions such as your small claims action, so the September 15 trial date will need to be vacated. Attached as Exhibit 'B' is the email from Gary L. Justice, Esq.;"

15) It is Josephs' position that the Stay established by this Honorable Court (hereinafter "Pet Food Products Liability Litigation Stay") the does not apply to Josephs' small claims action since the action is in state court and Josephs is not a Plaintiff in the "Pet Food Products Liability Litigation" now pending before this Honorable Court.

WHEREFORE, Josephs prays that this Honorable Court declare that:

1. The "Pet Food Products Liability Litigation Stay" does not apply to the case of Josephs v. Nutro Products, Inc. now pending in Waltham District Court, and that Josephs can proceed with the case of Josephs v. Nutro Products, Inc.

and

2. Enjoin Nutro Products, Inc. and its attorneys from asserting that a Stay is in place with regards to the case of Josephs v. Nutro Products, Inc. now pending in Waltham District Court;

OR IN THE ALTERNATIVE:

3. Grant Josephs Relief from the "Pet Food Products Liability Litigation Stay" in order that Josephs can proceed with the case of Josephs v. Nutro Products, Inc.

Date: August 21, 2008

Respectfully submitted,
Robert M. Josephs

Signed:

Robert M. Josephs, Esq.
BBO#628655
705 Centre Street, Suite 3
Jamaica Plain, MA 02130
(617) 522-3200

Exhibit A

STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL

For Court Use Only → DOCKET NO. 08SC0881

Trial Court of Massachusetts Small Claims Session

PART 1

☐ BOSTON MUNICIPAL COURT

☒ DISTRICT COURT Waltham Division

☐ HOUSING COURT ______ Division

PART 2

PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE
Robert M. Josephs
267 Moody Street, Suite 201
Waltham, MA 02453
PHONE NO: (617) 522-3200

PLAINTIFF'S ATTORNEY (if any)
Name: pro-se, Plaintiff is an attorney
Address: 5942F000007/29/08CIVIL 30.00
5942F000007/29/08SURCHARGE 10.00
PHONE NO:
BBO NO: 628655

PART 3

DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE
Nutro Products, Inc.
445 Wilson Way
City of Industry, CA 91744
PHONE NO:

ADDITIONAL DEFENDANT (if any)
Name: Ronald Ong, President
Address: c/o Nutro Products, Inc.
445 Wilson WAy
City of Industry, CA 91744
PHONE NO:

PART 4

PLAINTIFF'S CLAIM. The defendant owes $ 2,000.00 plus $ 40.00 court costs for the following reasons: Give the date of the event that is the basis of your claim.

Plaintiff brings this claim for six thousand dollars ($6,000.00) pursuant to Massachusetts General Laws Chapter 93A section 9. Plaintiff demands triple damages, Plaintiff's attorney's fees (if any) and Court Cost. Plaintiff had purchased the Defendants' cat food, Nutro Products, for his cats Badger. Nutro Products cat food contained poison. Plaintiff's cat became ill and passed away on May 5, 2007. The Defendant's insurance company, the Hartford, rejected the Plaintiff's claim. Hence the Plaintiff brings a claim under M.G.L. ch. 179D. The Plaintiff brings a claim for cost of the cat, and vet bills.

SIGNATURE OF PLAINTIFF x [signature] DATE [handwritten date]

PART 5

MEDIATION: Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date.

☐ The plaintiff is willing to attempt to settle this claim through court mediation.

PART 6

MILITARY AFFIDAVIT: The plaintiff states under the pains and penalties of perjury that the:

☒ above defendant(s) is (are) not serving in the military and at present live(s) or work(s) at the above address.

☐ above defendant(s) is (are) serving in the military

x [signature] SIGNATURE OF PLAINTIFF [date] DATE

NOTICE OF TRIAL

NOTICE TO PLAINTIFF:

You have sued the above defendant in Small Claims Court. You are directed to appear for trial of this matter on the date and time noted to the right.

You should call the court prior to the hearing date to learn whether the defendant's notice of trial was delivered and whether the defendant has filed an answer.

SEE ADDITIONAL INSTRUCTIONS ON THE BACK OF THIS FORM

NAME AND ADDRESS OF COURT
Waltham District Court
38 Linden St.
Waltham, MA

DATE AND TIME OF TRIAL
9/15/08 AT 9:00 a.m.
DATE TIME
ROOM NO.

BOTH THE PLAINTIFF AND THE DEFENDANT MUST APPEAR AT THIS COURT ON THE DATE AND TIME SPECIFIED

COURT USE ONLY

PLAINTIFF'S NOTICE

FIRST JUSTICE Gregory C. Flynn

CLERK-MAGISTRATE OR DESIGNEE Michael J. Finucane

INSTRUCTIONS FOR FILING A SMALL CLAIM ...

Windows Live™

Exhibit B

Josephs v. Nutro/Waltham Small Claims

From: **Justice, Gary L.** (GJustice@gibsondunn.com)
Sent: Wed 8/13/08 4:38 PM
To: robertjosephs@hotmail.com
Cc: antjoval@juno.com

Mr. Josephs: I spoke this morning with your law partner, Anthony Valdettaro, regarding the small claims action you have brought against Nutro Products, Inc. in Waltham, Massachusetts. Mr. Valdettaro said you are out until August 20, but I nonetheless left my direct phone (213 229-7446) and email (gjustice@gibsondunn.com) with him, and asked him to request that you contact me as soon as possible if he speaks with you. I am also copying Mr. Valdettaro on this email.

As you undoubtedly know, but as I explained to Mr. Valdettaro, the subject matter of your small claims action is also the subject matter of a nationwide class action pending in Federal court in New Jersey in which a settlement has already been preliminarily approved. I also explained to Mr. Valdettaro that full details of the settlement, applicable deadlines etc. may be found at www.petfoodsettlement.com

My law firm represents Nutro Products, Inc. ("Nutro") in the aforementioned class action lawsuit. The preliminary approval order entered in the class action case provides for a stay of actions such as your small claims action, so the September 15 trial date will need to be vacated. Please call me re this, and other matters. If we are unable to work this out informally, Nutro will, of course, see to it that local Massachusetts counsel is appointed to deal with the matter. Hopefully, that will not be necessary. I look forward to hearing from you at your earliest convenience. Thank you.

Gary L. Justice, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7446 (direct phone)
(213) 229-6446 (direct fax)
gjustice@gibsondunn.com

Gary L. Justice, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7446 (direct phone)
(213) 229-6446 (direct fax)
gjustice@gibsondunn.com

"MMS <Gibsondunn.net>" made the following annotations.

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
==

In re: Pet Food Products Litigation

MDL Docket No.1850 (all cases)
Civil Action No. 07-2867 (NLH)

CERTIFICATE OF SERVICE

I, Robert M. Josephs, Esq., hereby certify that on August 21, 2008, I served the Interested Party's Motion for Declaratory Judgment or Relief from Stay of the Defendants' counsels and insurance company, addresses listed below by mail postage prepaid address listed herein.

Date: August 21, 2008

Robert M. Josephs, Esq.
BBO #628655
705 Centre Street, Suite 3
Jamaica Plain, MA 02130
(617) 522-3200

Certificate of Service List

Mr. Gary L. Justice, Esq.
Gibson, Dunn & Cructcher
333 South Grand Avenue
Los Angeles, CA 90071

Mary E. Gately, Esq.
DLA Piper US LLP
500 8th Street N.W.
Washington, DC 20004

Craig A. Hoover, Esq.
Hogan & Hartson
555 Thirteenth Street, NW
Washington, DC 20004

D. Jeffrey Ireland, Esq.
Faruki Ireland & Cox, PLL
500 Courthouse Plaza, SW
10 North Ludlow Street
Dayton, OH 45402

Mark C. Goodman, Esq.
Squire, Sanders, & Dempsey
One Maritime Plaza
Suite 300
San Francisco, CA 9411-3492

Mr. Jeffrey Viner
Chubb Group of Ins.
P.O. Box 2620
3090 Bristol
#600
Costa Mesa, CA 92626